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International shipping through the peculiar situation of the straits of the Dardanelles, the Marmaras and the Bosphorus

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Abstract: The purpose of this study is to make a historical retrospective that will investigate and demonstrate, through conventional rules and not, the handling of freedom of navigation, in a particularly difficult situation, that of the straits of the Bosphorus, the Marmara and the Dardanelles. The constant accidents, the evolution of international law, the law of the sea, the ongoing struggle of the hegemony of Turkey for the first dominant and elected power in the region had the purpose of observing an intense diplomatic game, for several years, across the straits. Several contexts and especially the Monteuax Convention has tried to solve several legal problems for the navigation of the straits, which were later strengthened by the provisions of UNCLOS. The protection of the marine environment, the pollution of the sea, the ongoing accidents and the more general legal protection among international rules concerning the straits are additional matters worthy of research

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and analysis.

Keywords: UNCLOS; IMO; Montreux Convention; London Conference; Lausanne Convention; Dardanelles; Bosphorus and Marmara Straits; international law; law of the sea; environmental protection; pollution of the sea; international accidents; diplomatic law; legal state of the straits.

Introduction

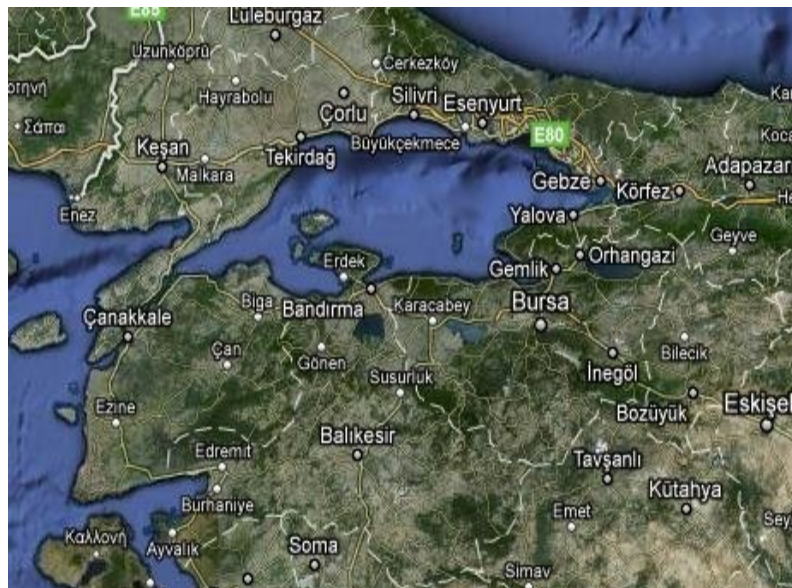
The most famous straits in the history of international law and the law of the sea are those located in the area of the Dardanelles, Marmara and they connect the Aegean Sea and the Black Sea to the Mediterranean, Europe and Asia. The specific status of the straits has been in constant dispute since the period of the Ottoman Empire and Russia as their continued internationalization and successive agreements reached an important agreement that is the Montreux Convention of 1936, which is still valid today (López Martin, 2010; Rothwell, 2016). The specific straits have a collective geographical form that includes three sections, a marine section and two straits. The Dardanelles strait meets the exit from the Aegean Sea and the entrance to the Black Sea, following the Sea of Marmara, the Bosphorus Strait and finally connects to the Black Sea.

Turkey refers to the straits as:

“(…) the USSR and the Russian Federation’s verbal notes given to the Turkish Government concerning the passage of vessels of war through the “straits”, refers to the terms of “Bosphorus and Dardanelles” and not to the “Black Sea Straits” term (…)

the Greek notes only refer to the “straits” term and no reference is being made to a term like “The Black Sea Straits”. Turkey’s response notes to all states concerning the passage of their naval vessels through the straits, and all the informative notes according to article 24 of the [Montreux] Convention given to the high contracting states concerning the passage of foreign naval vessels, refers only to the “Turkish Straits” term. Those practices, actually do constitute legal evidences (…)” (Ünlü, 2002).

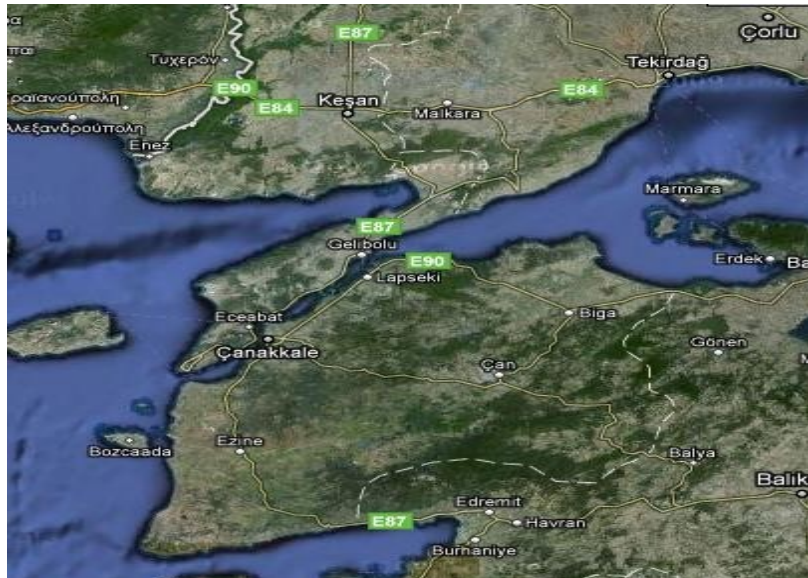
Map 1: The straits of the Dardanelles, the Sea of Marmara and the Bosphorus



Source: google earth

These specific sections of the straits, as we can understand, have its own geomorphological limits and special characteristics. Specifically the strait of the Dardanelles is 70 kilometers long, 3.7 kilometers wide at the entrance and has a total depth of 91 meters (Ünlü, 2002). The currents in the area are mainly two, one surface and the other undersea. The surface current has a relative speed that reaches the two nodes and its narrowest elements the four nodes with an extension towards the sea of Marmara and the Aegean Sea. As far as the undersea current is concerned, it has an opposite time and relative speed towards the two nodes. Winds that are north and northeast have as a result an effect, that reaches a surface current in shipping, where when there is a southerly wind it results in its relative mitigation (Caşın, 2002). The specific strait presents two relative bends that reach up to 80° and very long ships and tankers face, as a consequence, relative movement difficulties.

Map 2: The Dardanelles Straits

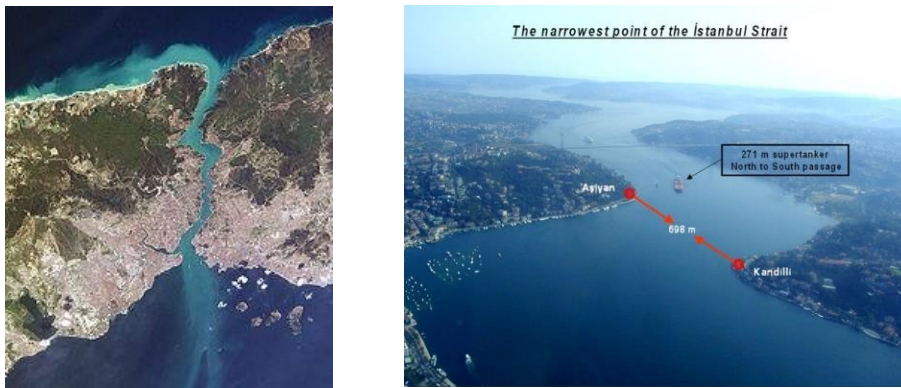


Source: [http://www.worldportsource.com/ports/maps/TUR_Dardanelles Strait 2077.php](http://www.worldportsource.com/ports/maps/TUR_Dardanelles_Strait_2077.php)

As for the Sea of Marmara, we are talking about a sea zone with a length of 324 kilometers and a width of around 93 kilometers. The depth is great and reaches from 495 to 1230 meters with a current of medium speed of a knot with a direction from the east to the west side, making it easy to cross. The route of the ships allows the entrance to the strait of the Bosphorus from the north side to the island of Marmara. It is about the shortest route that has to do with the straits of the Bosphorus and the Dardanelles

(Schildknecht, Dickey, Fink, Ferris, 2018).

Maps 3 and 4: The Bosphorus Strait (left) and the narrowest point in it (right)



Source: <http://en.wikipedia.org/wiki/Bosphorus>,
http://www.afcan.org/dossiers_techniques/tsvts_gb.html

The area of the Bosphorus strait has a great narrowness with a width that reaches 500 meters and a depth where it exceeds 28 meters. It is about a similarity, where the sea channels, that have a river, are big. The strong currents have to do with the positions Roumeli Hisar and Anadolu Hisar. We can say that the relevant conditions are the same with rivers. The currents that appear have a special form since the current moves from the Black Sea to the promontory and from the middle zone vice versa. The

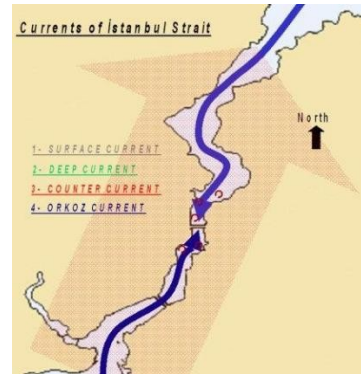
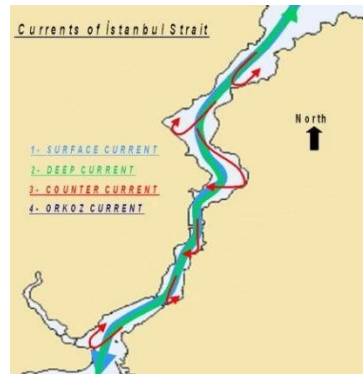
specific movement has to do with the rotation of the sea, where looking at it, it shows that it is churning and makes the passage in the Yeniköy area particularly difficult for the passage of mainly small ships. Reefs are located between the straits of the Bosphorus and are particularly rare. They have a presence where it is located near the coasts that exist in the southeastern sections in the area of Roumeli Kavakli as well as in its northern mouth which has to do with the European passage of its section.

Map 5: The current in Yeniköy and its rotary motion



Source: Capt. F. X. Pizon, The Turkish Straits Vessel Traffic Service (T.S.V.T.S.). Available at: http://www.afcan.org/dossiers_techniques/tsvts_gb.html

Maps 6 and 7: The current in the Bosphorus strait



Source: Capt. F. X. Pizon, The Turkish Straits Vessel Traffic Service (T.S.V.T.S.). Available at: http://www.afcan.org/dossiers_techniques/tsvts_gb.html

What is the movement from the shipping side to the straits?

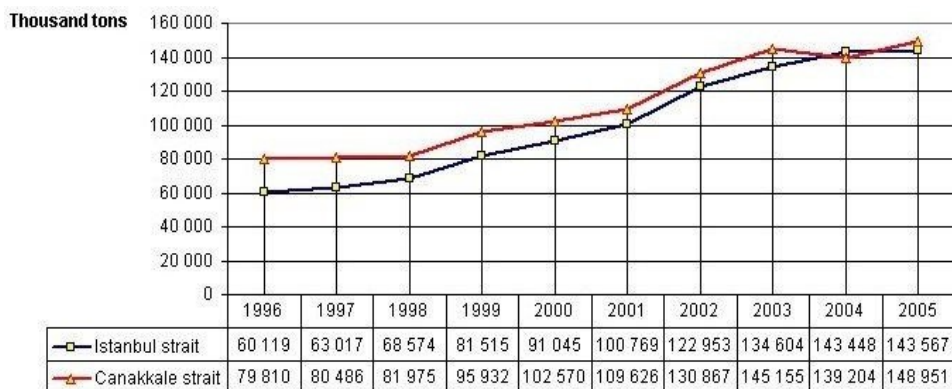
Due to the geographical location of the straits, shipping traffic is greater in the Suez Canal as well as the Panama Canal. The growing volume of maritime traffic in the area due to its geographical peculiarities has been one of the main causes of accidents that cost human lives and cause damage to the coastal area (Ünlü, 2002).

The oil content in the area has severe impact on zooplankton (Öztürk, Karakulak, Öztürk, 2002), as for example resulted in the Independenta 1979 and Nassia 1994 accidents causing

massive fish kills (Güven, 2002). Also, the continuous explosion of an LPG tanker in the Bosphorus strait can be said to have the same effect as a strong earthquake of 11.00 on the Richter scale for the residents of Istanbul (Inan, 2000).

The peculiarity of the straits to ships of great length was illustrated when Turkey allowed the passage, on 1 November 2001, to a Ukrainian aircraft carrier, the Varyag. The weather conditions led to the tow cable being cut off from the aircraft carrier. It remained ungoverned due to the weather conditions in the sanctuary, which in the end was saved after being destroyed.

Fig. 1: Shipping traffic in the straits between 1996-2005, in number of ships (above) and in thousands of tonnes of displacement



Source: Capt. F. X. Pizon, The Turkish Straits Vessel Traffic Service (TSVTS).

http://www.afcan.org/dossiers_techniques/tsvts_gb.html

What is the specific status of these straits?

The history of the specific straits has to do with a series of processes, agreements and conditions. The sovereignty of the straits began in the Byzantine Empire and later by relative restrictions of diplomatic and not influence from the side of Russia to delimit the relative status, which deals with the specific straits. The Treaty of Montreux was certainly an important milestone, which has to do with the situation where still exist today in the straits.

From the Turkish side, the Mare Clausum Turcicum and especially the occupation of Constantinople by the Ottoman Turks in 1453, of the coastline and the black sea from 1484, was a period of absolute, undisputed Ottoman sovereignty towards the straits and the black sea turned the ottoman empire into full sovereignty in the area, where the right of passage and the discretion to grant passage through the straits rested on the ottoman empire. The policy of developing trade through maritime traffic and mainly the entry of war fleets into the Black Sea resulted in securing historic capitulations under the condition, that they were headed to Constantinople.

Within this framework, the passage of Russian merchant ships, which were headed for the Sea of Azov, as well as the free access to the Mediterranean Sea through the straits, were mentioned as follows:

“(…) the Black Sea as his own house to which strangers cannot penetrate; it is a virgin shut up in the harem, hidden from the view of strangers and he would rather have war than permit other nations to navigate on this internal sea (…).”

With the conquest of Crimea and the Treaty of Küçük Kaynarca in 1774, the Black Sea was recognized as an area with pure commercial privileges, where the relative use and the right of passage allowed the practice of trade by Russian merchant ships. This had the consequence that the status of the Black Sea and the straits from the internal waters reduced the Ottoman control as well as the status of the common area. The relative refusal of passage for warships from the Ottoman Empire was addressed only to third parties. The same empire granted this right only to selective convictions and after secret agreements.

During the First World War, the right of passage followed the path of bilateral treaties. The relevant bilateral treaties began with Great Britain in 1799, France in 1802, Prussia in 1806, Sardinia in 1823, Sicily, Denmark, Sweden and Norway in 1827 due to the Russian imposition of a military manu concerning the empire and the Treaties Peace of Bucharest signed in 1812 and the Akkerman Convention in 1828, and with Austria in 1874 (Rozakis, Stagos, 1987).

The Treaty of Adrianople in 1829 between Russia and the Ottoman Empire eliminated certain restrictions that had been imposed by the trading fleets. In this way, the rights to commercial ships also meant the simultaneous assimilation with

Turkish ships.

The specific treaty followed the regime, where it later interfered with the Treaty of Lausanne in 1923, and has mentioned about the straits:

“(...) besides to watch with care that the commerce and navigation of the Black Sea in particular shall not suffer hindrance of any Kind. To this end it recognises and declares passage through the Channel of Constantinople and the Straits of the Dardanelles entirely free and open to Russian ships under the merchant flag, loaded or in ballast, whether they come from the Black Sea or to enter the Black Sea. In virtue of the same principle, the passage through the Channel of Constantinople and the Straits of the Dardanelles is declared free and open to all merchant ships of powers which find themselves at peace with the Sublime Porte, whether they are going to Russian ports on the Black Sea or returning from them, loaded or in ballast (...)” (Ünlü, 2002). Regarding the war fleets and the relative selectivity of Russia

through secret agreements, the result was in 1799 that the Russian fleet faced the French and later the integrity of the Ottoman Empire was protected by the signing of the peace treaty of 1805, which stipulated:

“(...) high contracting parties agreed to consider the Black Sea as closed and not to allow there the appearance of any flag of war or armed ship of any power whatsoever, and in case any power should attempt to appear there in arms, the two high contracting parties promise to regard such an attempt as a *causus foederis* and to oppose it with all their naval forces as being the only way to ensure tranquility of them both (...)” (Ünlü, 2002).

In 1809, the Dardanelles agreement with Great Britain was signed (Çanakkale (Kale-i Sultaniye) Agreement). In this, it was stated that for the straits of the Mediterranean Bahr-I Sefid, as well as for the “straits of the Black Sea, Bahr-I Siyah” the empire would forbid peacetime passage for all warships. With the relative treaty of Hünkâr İskelesi in 1833 and with the

Egyptian victories against the Ottomans, the prohibition of sailing between the war fleet was established.

The Hünkâr İskelesi Treaty affirmed that:

“(...) contracting parties are bound to afford to each other mutually substantial aid, and the most efficacious assistance for the safety of their respective dominions. Nevertheless as his Majesty the emperor of all the Russians, wishing to spare the Sublime Porte the expense and inconvenience which might be occasioned to it, by affording substantial aid, will not ask for that aid if circumstances should place the Sublime Porte under the obligation of furnishing it, the Sublime Porte, in the place of the aid which it is bound to furnish in case of need, according to the principle of reciprocity of the Parent Treaty, shall confine its action in favour of the Imperial Court of Russia to closing the Strait of Dardanelles, that is to say, not allowing any foreign vessels of war to enter therein under any pretext whatsoever. The present and secret article shall have the same force and value as if it was inserted word for word in the Treaty of Alliance of this day (...)” (Ünlü, 2002).

Thus, Russia became the sovereign of the straits and it lost it with the Treaty of London signed in 1841.

(Follows) The signing of multilateral agreements

The multilateral agreements on the specific straits started from the second war that took place between Egypt and the Ottoman Empire. Thus, the starting point is the Treaty of London, on 13 July 1841, which mentioned the straits of the Mediterranean “Bahr-I Sefid” as well as the “straits of the Black Sea, Bahr-I Siyah”. In it, the general rule of the passage of war fleets ended the Russian supremacy through the straits. Also as we have seen with the bilateral agreements, there was a selective treatment of states wishing to pass through the straits, which was characteristically referred to as “the old principle of the Ottoman

Empire” (Rozakis, Stagos, 1987).

The Treaty of Paris in 1856, which followed the Crimean War (1853-1855), allowed the empire the relative passage for the French and English fleets in the straits, which engaged the Russian fleet in Sevastopol. With the Treaty of Paris, the crossing of the straits was free for the merchant fleets of all states.

According to Articles 11 and 13 the Black Sea was converted into a neutral sea following the demilitarization regime. With the Treaty of Paris, the Ottoman Empire and Russia could not be allowed to maintain a war fleet or related shipyards in it. The treaty aimed to create a special regime that maintained the status quo as it had been created after the Crimean War. In this way, the restructuring of the economy and the armed forces was allowed, where it continued to be in effect with the Franco-Prussian war of 1870, and Russia also renounced neutralization with a related declaration.

The relevant repudiation was contrary to the concept of international law, where the change of party or the abrogation of a treaty could be allowed after the consent of the contracting parties. The relative action of Russia had to do with the protests of Great Britain and the London Conference in 1871¹ for the abandonment of the neutral Black Sea, thus giving the

¹We speak about the straits of: “Çanakkale (Kale-i Sultaniye, Dardanelles)” and “Bahr- I Siyah”. In particular art. 2.

possibility to the Sultan to allow the passage of the straits and the warships of the states that were from years to alliances and ongoing friendships. Through this diplomatic method, control of the straits was regained.

In 1872, it refused the passage of the US warships “Congress” and “Shenandoah” on the grounds that the flag state was not a member of the London conference. But when the Romania and Bulgaria created a remarkable war fleet the empire allowed passage in a ship of the former, while denying such right to gunboat Nadejda of the second, until Bulgaria notified that its ship would pass through the Straits in any case and that held the empire responsible for what would happen in case of obstructing the crossroad, a statement that finally made the crossroad possible.

The specific position of the coastal states of the Black Sea to have absolute control and the movement of commercial fleets through the specific straits took place before the start of the First World War. The state of war, which allowed passage to merchant fleets, resulted in the relative bombardment by the Italians and the fortifications of the straits located in the Dardanelles. After the relevant bombardment, the empire closed the straits. Despite the protests against Russia, the First World War broke out and the empire declared neutrality, proceeding to the relative mine laying that took place on 3 August 1914,

allowing only a narrow sea channel for use by commercial shipping.

The passage of the ships after continuous protests of the allied forces of the Entente became impossible. After the start of the related hostilities of the First World War, the German battleships Goeben and Breslau received the relevant permission to pass through the straits, given that the crews from the German side intervened and tried their war strategy in the same way. In 1914, they sailed through the straits and bombarded the Russian ports that were located towards the Black Sea and so Great Britain, Russia and France declared war on the Ottoman Empire. After the declaration of war, the empire completely closed the straits, resulting in the isolation of Russia. The attack of the Dardanelles on 19 February 1915 resulted in failing and the victors had free passage through the straits, as was officially recorded by the Treaty of Sevres.

The Treaty of Sèvres

A special regime for absolute freedom across the straits was created by the Treaty of Sèvres of 10 August 1920 for merchant and warships that were under the control of the Straits Commission, which consisted of a delegation of Great Britain, France, Italy, Japan, USA, Bulgaria, Romania, Greece and Turkey. The great powers are entitled to two votes and the

Balkan countries to one. Thus, was established the passage of war fleets through the straits. The specific treaty prohibited the supply of ships, especially of munitions that where necessary for the continuation of the voyage. It was also forbidden to delay repairs beyond the passage and manning of ships with additional crew. Warships would remain in the straits for more than 24 hours and warships would pass after 24 hours minimum. Specifically, the overflight of commercial, military aircraft was free and the waters of the straits would not be the subject of a naval blockade.

The Treaty of Sèvres had to do with the demilitarization of the straits and the prohibition of military forces, where the society of nations had imposed. Specifically, it limited the sovereignty of Turkey. The coast of the Dardanelles and the Marmara would belong to Greece, thus imposing a regime of demilitarization beyond the straits, the islands of Samothraki, Lemnos, Imbros, Tenedos and Lesbos which form a geographical set.

The destruction of Asia Minor and the creation of a new Turkish state resulted in the implementation of the specific treaty even though it was voted and ratified without making the text unenforceable, short-lived and useful for future negotiations.

The Treaty of Lausanne

The control of the straits was given to third parties and not to the Ottoman Empire with the Treaty of Lausanne signed on 24 July 1923. Great Britain, Bulgaria, France, Romania, USSR, Greece, Yugoslavia, Turkey and Italy were included in it. The Treaty decided beyond peace for the free movement of ships regardless of the status of the flag that the ship carries, thus creating an objective framework where warships ended the status of Ottoman influence and control in the straits as well as the hegemony of the Western powers. The intervention on the straits by the commission and the guarantees they had, was a continuous compromise for the security of the interests of the European states, where they had no relation to the Black Sea states.

In essence, the specific treaty concerned the passage of commercial ships, aircraft, the passage of warships, submarines, the stay in ports between the straits and the Black Sea, and specific provisions that have to do with the protection of health. The ultimate goal is the passage of the straits by commercial, warships and aircrafts.

It is about a situation where the freedom of navigation of whatever flag every ship had excluded the taxes unless one had to do with the services of the coastal state, i.e. navigation services in the straits, towing, etc. The health control goes

beyond the coastal state was regulated through special provisions provided by the treaty. In the event of Turkey's neutrality, the conditions were the same as those of the peaceful period, where no interference with free movement, i.e. freedom of navigation, was allowed. However, if Turkey was in a state of war, neutral ships and aircraft were allowed to transport reinforcements, as they prohibited the use of the straits. Regarding the passage of warships, the passage would have a status where it would continue in times of peace and war.

The only limitation in the period of peace was the imposition of numerical control. The straits committee was responsible for control and restriction. It is a limitation imposed by Russia to control the great Western powers. The military forces in each Black Sea strait state would not exceed the number of ships of the strongest fleet dealing with the coastal states and the passage. In the great powers, up to three warships had been sent under conditions, the largest of which would have reached 10,000 tons. No possibility of intervention on the part of Turkey in a case that would intervene neutrally when the status of shipping and aircraft did not provide any possibility of intervention.

In accordance with the Hague Convention of 1907, aircraft and warships would not engage in arrests, raids and hostile actions in the straits. Moreover, if Turkey was part of the hostilities, ships

and aircraft that were neutral and did not support Turkey's enemies would be allowed, as well as the movement of submarines. Aircraft and neutral ships could pass through the straits and Turkey maintained their inspection in places where it would indicate. The warships would interfere in the straits causing traffic jams because of the overnight stay for reasons of navigational safety apart from the cases, that would have to do with wrecks and maritime danger.

The regime of demilitarization, for Greece and Turkey, which would reach 20 kilometers from the area of the Dardanelles and 15 from the side of the Bosphorus, would also include the Sea of Marmara but would interfere with the islands of Imrali, Samothraki, Limnos, Imbros, Tenedos and Lagos. A related prohibition would also exist for undersea warfare that would be distinct from submarines. In Constantinople they allowed 12,000 men who would have the role of guarding and maintaining the naval base that had to do with the naval station.

The preservation of the right of surveillance from the side of the air was connected with airplanes and hot-air balloons for the demilitarized areas. Additionally, for the areas that had to do with the land, the creation of observatories and the movement of military units, were sited outside the demilitarized areas. As for the fleets, they had to move to the territorial waters of the neutral zones.

Finally, the straits commission would provide the guarantees at the international level for the possibility of the great powers to intervene and defend their interests and disrupt the free passage that would violate the demilitarized zones. In this way, they would collectively impose the measures decided among the League of Nations.

The Montreux Convention as an important negotiating station at a particular political moment

After the Treaty of Lausanne, the international environment for the status of the straits was given a new impetus by the Montreux Convention of 1936, where to this day it is an important text on the international level for the status of the straits.

The rearmament of the straits and the replacement of the previous regime that had to do with the Treaty of Lausanne, contributed to the efforts of Turkey and Russia², who tried to limit the influence of Germany towards the straits. Specifically, from the side of Turkey, the revision of the Lausanne regime was sought, creating a treaty of friendship with other countries that wanted to have influence in the region. The relative political

²In particular, Italy considered that the specific meeting could not have any significant result because there were sanctions in the background. On the other hand, the USA believed that there was no reason for representation where the object of the relevant convention had nothing to do with freedom of navigation.

influence on the part of Italy³, Germany⁴ and Japan⁵ as well as the simultaneous inability of states such as Great Britain and France to intercept German aggression resulted in questioning the system that had been created at the time of the signing of the treaty of Lausanne.

The guarantees did not cease to exist, thus allowing the creation of a security system, which Turkey sought for the straits, within the framework of the League of Nations. It extended this attempt to the rest of the members of the Treaty of Lausanne, inviting them to negotiations for the change of status and the relative rule of *rebus sic stantibus*. As a result, the Montreux agreement signed on 20 July 1936, with the participation of Australia, Bulgaria, France, Yugoslavia, Greece, USSR, Great Britain, Japan, Romania and Turkey according to which the control of the straits and the equipment would return to Turkey. In the same way, it abolished the commission of the straits and its responsibilities passed to Turkey, which used the Treaty of Lausanne for the passage through the straits.

The role of Great Britain was important during the conference as it passed the principle of *mare liberum* into the treaty. Japan, on

³Specifically, he was referring to the related invasion that took place from Ethiopia in the fortification of the Dodecanese in 1935 and resulted in the Treaty of Lausanne.

⁴The relative occupation of the Rhineland area from 1936 was already in conflict with the Treaty of Versailles, since Japan's naval equipment and relative support had to do with its aggressive pursuits towards the Far East.

⁵We are referring to the relative withdrawal from the League of Nations in 1933 because of the events they had to do with the invasion of Manchuria.

the other hand, wanted the straits to be closed because its ultimate goal was to intercept the plans of the Russian fleet, i.e. to limit the passage of ships that were in overseas countries, to prohibit the passage of submarines and aircraft carriers, as well as the freedom movement of war fleets whose mission was to maintain peace and security in the area. Finally, as we predicted, the free passage of fleets through the straits was adopted. The commission of the straits was abolished, and Greece militarized the islands of Lemnos and Samothrace. Finally, the adoption of the regime of limited passage of the war fleets of the overseas states in the straits was intended to restore Turkish sovereignty⁶. The specific agreement, despite the general status of the time, accepted the freedom of the high seas without any limitation. The regime for the straits with special regulations limited the absolute freedom of ships, the security of the state of the straits as well as of the overseas states. It is about a freedom where it had to do with the commercial fleets without there being the relative distinction of the cargo in a period of war and peace. Towing is optional and the health check is free of charge. Particularly important for the time was that in the event that there would be an epidemic of plague, typhus, cholera, yellow fever, typhoid, smallpox within a short period of five days, the sanitary ward of the health station would have to continue the

⁶See in particular Art. 18, par. 1, lett. d) of the treaty of Montreux: <https://www.britannica.com/place/Dardanelles>

journey without any charge.

If Turkey was in a state of hostilities, the relative crossing of the straits would not be allowed by the warships and even the commercial fleet that the specific state would be at war with. As far as neutral merchant ships are concerned, they enjoy freedom of navigation under the condition that they do not aid the enemy. In the special corridors, what Turkey would decide would be determined. Merchant ships in this case would cross the straits by day and follow the routes where Turkey would have indicated. It is thus for ships where it would be compulsory and free of charge.

It is evident after a study of the agreement, that Turkey has full control of the area. In fact, it was able to act according to its interests in case the non-state was at war, since it had the right to spy on merchant ships to ensure that they did not help the enemy. The right of discovery seems abusive, but there are no other measures to prevent these movements.

The right of passage would be limited in the event that Turkey was in a state of war with some country and as a consequence it would impose the passage during the day through channels that would determine the use of navigational services. The war crisis in each case seems to be subjective and the accumulation of threats should result in Turkey restricting the passage.

As for the passage of warships in the straits, their crossing is

related to technical and operational characteristics. Their ultimate goal deals with the prohibition of submarines and aircraft carriers. In time of peace the limitation of warships connected with overseas states does not apply to light ships, small battleships and auxiliary ships where their displacement does not exceed nine tons.

The specific dispute that has to do with the auxiliary ships that transport the fuel and are exempt from the bans is also connected to their limited visit to the ports of the straits and mainly by Japanese ships. The passage of the warships gives the possibility at a diplomatic level to provide for Turkey the exact composition of it.

As far as the ships coming from the overseas regions are concerned, they are distinguished between ships of the line and those that recognize the right of the straits, that is, warships and not aircraft carriers, even if they exceed 15,000 tons, on the assumption that they would pass through the straits with an escort of two destroyers. They can be sent to the narrow submarines that have been bought, even manufactured by a non-foreign country and have informed Turkey about it.

The submarines of the overseas states will pass the straits so that they can be docked in ports that are doing repairs as long as Turkey is informed first. Submarines can only be found on the surface and in an individual way, as the relative crossing from

the overseas states of the aircraft carriers is not allowed.

We find in parallel that the exclusive control of the maritime space by the coastal states is in contrast with the general freedom of the open sea. The constant notification of the increase in the strength of the fleets and their monitoring by Turkey⁷ had the effect of allowing ships over 30,000 tons to pass through the Black Sea, as well as ships equipped with guns over eight inches. Exceptions are ships with humanitarian aid and ships visiting Turkey for visiting purposes.

The permitted displacement reaches 8000 tons and according to article 13, a relevant notification of Turkey as well as any other relevant approval is not needed. If the state exceeds the displacement provided for in the agreement, Turkey will notify the Black Sea states within 24 hours and Turkey can respond within 48 hours. Nothing has been mentioned regarding the natural disasters as well as the authorization of Turkey for a relative objection to a non-existent state. The regulation has to do with the discretion of Turkey and the stay in the Black Sea of the war fleets and overseas states will not exceed 21 days.

According to Article 19, in the event that Turkey does not belong to the belligerent parties, neutral warships will sail through the straits, and strait operations may continue. If Russia is at war, it will not be able to develop the straits and threaten

⁷See in particular Artt. 10-18 of the treaty of Montreux: <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166981>

the enemy fleets in the Black Sea. The recognition of the war has to do with Turkey's discretion.

The warships of the belligerent states, that are beyond the bases and the start of hostilities, will be able to pass through the straits and avoid their entrapment in the Black Sea. They can simultaneously pass through the straits and ships of belligerent states as they can help the relevant state, that has suffered the attack. This position has as its purpose the spirit followed in the London Convention of 1871 for the opening of the straits from Turkey to the allied powers and the creation of agreements between them.

When Turkey is in a state of war, the provisions of articles 10 to 18 will not be applied. The deployment of warships is at the discretion of the Turkish government. This is a matter of discretion, which is based on the assumption of the Strait of Corfu, which the ICJ ruled that:

“(...) warships may pass through straits used for international navigation, recognizing at the same time that the states of Albania and Greece did not maintain “normal” relations and that Greece considered itself technically in a state of war with Albania. Albania's position to close the straits by laying mines, prohibiting the passage of warships of Great Britain was not accepted by the court (...)”.

In case Turkey is threatened by war then it has the right to apply article 20 which prohibits the passage of warships and at the same time to inform the rest of the League of Nations and the general secretary. A relative two-thirds majority is needed to decide on measures that are not justified by the majority of those

who signed the convention of states. In this way, Turkey will have to withdraw the relevant measures (Liakopoulos, 2020)⁸. Over time, the UN did not receive specific obligations to legitimize the dangerous war, as there are no relevant resolutions.

According to article 23, the passage of civil aircraft is allowed in the straits and in case there are conflicts. The Turkish government is allowed to determine the passage of aircraft and the prohibited zones for crossing the straits. Civilian aircraft use the air routes after relevant three-day warnings to the Turkish government for emergency flights and after a warning that the passage will be made by regular flights. No regulation was given for warplanes as it was not accepted to apply the regulations in accordance with international law and the provisions of the convention on them.

As a particular novelty of the specific agreement was the way of revising and amending it, in accordance with article 28 et seq., given that the agreement has a duration of twenty years for free shipping, although it has been introduced by article 1 for an unlimited duration. Two years before the end of the twenty-year term, none of the contracting parties will terminate the

⁸In case of the ICJ: South West Africa (Ethiopia v. South Africa, Liberia v. South Africa) [1966] (Second Phase, Judgment) ICJ Reports 1966 is declared that: "(...) not certain whether the supervisory functions of the League of Nations could be exercised by the United Nations, since these functions were neither expressly transferred to the United Nations nor expressly assumed by that organization (...)".

convention. It will remain in effect until they hold a new conference with new terms for the new convention. In this way there is the possibility of guaranteeing and continuing the convention for a new conference and the annihilation of a regime for the straits and for regulations in accordance with the principles of the law of the sea.

After five years each contracting party in accordance with article 29 may make relevant amendments. The request for review supported by another state and in accordance with the regulation of articles 14 and 18 requires support for amendment, review of the contracting states with details of the reason for the submission of the relevant request. Without agreement through diplomatic channels the contracting parties will not be able to determine the terms of the review with the contracting parties.

The contract will thus be incomplete since:

“(...) does not provide for the procedure in case of disagreement, leaving open the possibility of multiple and conflicting interpretations of the text of the applicable convention (...)”.

The problem of terminating the convention is for political reasons since the balance of achievement and disruption opens the way for new negotiations that will be difficult to determine and at what levels it will reach. The new agreement will also arouse the interest of other states that are not parties to the specific agreement in case they realize that freedom of navigation will not be easily realized. This is a status with several freedoms from the specific agreement.

According to our opinion, this specific stance presents problems for the determination and what is valid during a state of war and the opportunities that Turkey will present to close the straits, especially after the categories of warships, artillery, as estimated for the status quo of the straits until the avoidance for individual energies.

UNCLOS III and what the Montreaux Convention proposed. What type of transit form was created?

By carefully reading the brief analysis of certain articles of the Convention, we understand that the right of safe passage in the sea of Marmara and the straits also have to do with the internal waters of Turkey as a bordering country. Specifically:

“(...) the straits of Istanbul and Çanakkale is an “internal water”, not only for geographical causes but also for historical reasons, since this geographic area was treated as a whole throughout the history. This is important from the point of the jurisdiction of Turkey, except for the recognised rights for passage and navigation (Inan, 2000) (...) the passage regime through the Turkish Straits is not a transit passage regime within the terms of present days legal terminology. Because, during the 1930s, there existed no transit regime at the straits used for international navigation called as the “transit passage regime” within the meaning as described in the UNCLOS, not even as norms of customary law. Due to this and also taking into account the minutes of the [Montreux] Conference, the regime related to the passage and navigation of ships through the Turkish straits is a sui generis type of innocent passage, since the [Montreux] Convention explicitly takes into account the security of Turkey and also the security of the Black Sea riparian states, as stated in the preamble (...) indeed, this factor and the Turkish draft article 12 by explicitly indicating that the provisions of the [Montreux] Convention can by no means limit the sovereign rights of Turkey at the region, aimed to give the passage an innocent passage regime character (...) The reason why the innocent passage status was not explicitly stated in the Convention can be explained by the non objection of the parties to the

Turkish view on the status of passage (...) Russia and other Black Sea states (...) it clearly follows from the UNCLOS that the more restrictive regime of innocent passage of foreign ships through the territorial sea (Part II) cannot be applied to their passage through straits used for international navigation (Part III), no matter whether these straits have been declared territorial sea or internal waters by the coastal state (...) Contrary to Turkish statements, the Montreux Convention does not give “full authority” in the Straits “exclusively” to Turkey (...) but Turkey, like any other country, has no monopoly for truth (...)” (Inan, 2000; Tanaka, 2023).

The straits of the Bosphorus and the Dardanelles are border ports that have to do with Turkey's internal waters. It is an act that is contrary to the law of the sea and customary law as well as to the UNCLOS III convention. As far as port limits are concerned, Art. 11 of UNCLOS III states:

“(...) the delimiting the territorial sea, the outermost permanent harbour works which form integral part of the harbour system are regarded as forming part of the coast. Offshore installations and artificial islands shall not be considered as permanent harbor works (...)” (Tanaka, 2023).

The straits of the Bosphorus and the Dardanelles with such a long length of tens of kilometers that enclose ports, harbor works are at the same time the baselines between the internal waters of the territorial sea that encloses within them. For this reason, harmless passage includes the full sovereignty of other states. The regulation of free passage through the Treaty of Lausanne of 1923 mentions in paragraph 5 of the annex the issuance of regulations that have to do with the stay of ships in the ports of the straits. Art. 2 of the 1936 Montreux Convention disallows dues when sailing without berthing in strait ports.

Conventional and customary status does not show full indications of Turkey's sovereignty over the straits to conclude

that they can be considered as internal waters. Conventional law that has to do with the straits used for international shipping and transit movement resulted in the form of passage where the rules of law are used for international shipping, therefore we are talking about an application of the *lex specialis* against the *lex generalis*.

The status of the straits within the detailed regulation of the Montreux Convention reinforces the final text contained in UNCLOS III. In this way, the different position of newer rules that have to do with the transit movement can be said to be *jus cogens*. This is a regime that has been included in Art. 35, paragraph c of UNCLOS III, as a special regime that keeps intact the status of the straits, which has to do with a set of long standing conventions.

The straits belong to the use of international navigation and every convention of international character before the signing of UNCLOS III made it as long standing (Ünlü, 2002). Consequently, article 35 (c) mentions as a special status the provisions that deals with the straits used by international navigation. The form of transit between a legal status of transit where the convention covers the creation of international customs regarding the transit movement is based on UNCLOS III but also on the more general *opinio juris*.

Criticism, experiment, evaluation at the time of the Montreaux convention

Turkey over the years presented different faces according to its personal interests and aspirations. From full participation to neutrality since the straits as a passage for warships could circumvent the removal of guns during the course of the passage. Russia's policy and the Yalta conference as well as the Potsdam conference likened the specific straits to those of Gibraltar, the Suez Canal and Panama, where their location with relative security in common with Turkey would be accepted by the western powers.

Even during the Vietnam war, Korea did not limit the passage through the straits, of the US warships, which were prohibited according to article 19 of the convention. The same practice of not banning the relevant dialogue was followed by Turkey during the six-day war where, in the case of Israel and the Arab states, Egypt declared a state of war with Israel.

In September 1966, Turkey did not allow the relative passage of the destroyer William Pratt from the American continent, stating that:

“(...) they distinguished between offensive and defensive weapons, a distinction which does not dominate the text of the Convention, but is an argument for the expediency of coastal state to balance political interests. Moreover, in this case there was no need for interpretation, since the caliber of the armament is clearly defined in the Convention and the superior caliber of the weapons of the American military was not disputed (...)” (Ünlü, 2002).

In the case of the 1968 agreement for the passage of American warships, specifically the Dyess and Turner, through the straits, the ships were not equipped with anti-submarine rocket launchers but with a caliber of 305 mm, and Russia strongly resisted the caliber of the weapon, where according to the contract it should be at 203 millimeters.

The new weapons were not to be used as they were not included in the treaty. The new weapons were opposed by those of an “aggressive nature” (Ünlü, 2002) with the basic assumption that it had not been foreseen anywhere in the agreement.

On the other hand, the passage of Russian aircraft carriers caused several protests since it categorized the anti-submarine missile cruiser to escape the convention. Russia in that particular period had included aircraft carriers for take-offs that would allow 25-30 aircraft with variable wings, i.e. mainly helicopters and aircraft that deal with fixed vertical wings, i.e. aircraft carriers where they included the Admiral Flota Kuznetsov class. Russia would not have made a mission if they had lost the air element and no ship would have been built where their armament apart from aircraft was minimal. The protests did not stop, when Turkey do not allowed warships from America to pass through the straits.

The “objective regime” of international treaties investigates and includes the consensus of the states involved in the practice of

states that impose their will through specific regimes. Specifically according to the International Law Commission (ILC), as stated:

“(...) the purpose of the Vienna Convention, the provision regarding treaties intended to create rights in favour of third states (Art. 36 of the Vienna Convention), and the provision reserving the possibility that a conventional rule may develop into an international custom (Art. 38 of the Vienna Convention), would offer an adequate legal basis for the general effects of an objective regime (...)” (Ünlü, 2002).

The straits are for Turkey a strong diplomatic and bargaining card not only with the west but also with the east states, for this reason the unilateral adoption of regulations for navigation in the straits for safety in the area of the straits had strong reactions for accidents from the Russia and Greece. The straits were also characterized as an area of the Great Barrier Reef of Australia, where:

“(...) the Turkish Straits as a PSSA which would limit navigational freedom may be not realistic (...)”.

It is an effort where, as a canal, Constantinople, it can encompass works of great competition where the straits are an alternative channel for shipping.

Within this framework, Turkey in 1993 proceeded with a regulation on the straits, which was implemented in July 1994. It is a regulation that aimed to stop accidents when road conditions were unfavorable and weather conditions created problems for navigation, nautical instruments and maintenance as well as the complete absence of navigation rules for the use of a navigator (Ünlü, 2002).

The Traffic Separation Zone (TSZ) and the related reporting system (TUBRAP) was intended to solve certain problems related to safety and operation, such as traffic control centers, the control of speed, the mandatory use of the navigator if there was a previous breakdown, the relevant arrangements for mandatory towing, the temporary prohibition of navigation as well as the non-consideration of permission for passage on large ships as well as on ships carrying dangerous cargo or goods through the straits.

Other Turkish regulations were created in January 1994 under the title “Regulations of Maritime Traffic for the Turkish Straits and the Marmara Region”, formed in accordance with the internal legislation of Turkey and not in general and indefinite terms with Turkey's commitments.

Specifically, they were created in accordance with article 115 of the Turkish constitution and article 36 of law 3046 on the responsibility of Ports. The security of the straits from the side of Turkey was the *pacta sunt servanda* principle, for this reason it proceeded to apply rules of internal order. As a consequence, a reaction from many countries that are adjacent to the straits, namely Greece, Ukraine, Bulgaria, Cyprus, Romania and Russia, was introduced.

Other measures for the sea of Marmara were taken in 2021 regarding the protection of the environment without showing

any interest from the previous ones, from a legal point of view. The interest had to do with the protection of the strait for hydrocarbon research as well as the protection from oil pollution⁹.

The regulations are reminiscent of those included in the Montreux Convention, especially article 2 para. e and g, which referred to harmless passage as applied to UNCLOS III and the territorial sea as well as straits used and applied to international navigation. Specifically, article 24 was included by Turkey to temporarily halt shipping without specifying the duration of the suspension, while articles 42 and 52 restricted the passage of large ships and related restrictions on ships with a relative radioactive load or nuclear propulsion. The use of a navigator, the police and customs control, and the imposition on the masters with the relevant instructions of Turkey, do not make any reference to the Montreux Convention.

Turkey submitted to the special Maritime Safety Committee, which is part of the IMO, a series of regulations that have to do with the straits but not with the previous regulation they had adopted in 1994¹⁰. The relevant committee refers to rules and recommendations, where they were not considered by Turkey,

⁹<https://www.duvarenglish.com/experts-emphasize-risks-of-oil-exploration-in-marmara-sea-as-company-obtains-license-news-64070#:~:text=The%20statement%20noted%20the%202021,Sea%20and%20the%20Mediterranean%20Sea.>

¹⁰https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TUR_1994_Regulations.pdf

that they came unilaterally in opposition.

Therefore, for Russia, the specific regulations came into conflict with the committee's regulations as many other delegations considered that the Turkish regulation had not included:

“(...) regulations issued by the Coastal State (...) in full agreement with the present Regulations and Recommendations (...)”¹¹.

As a result, Turkey changed several of the relevant provisions, which were included in the 1994 regulation and the IMO regulations, without amending the regulation (Ünlü, 2002). The specific regulations and recommendations were not implemented and the debate on the revision of the straits for the relevant traffic is an open topic, which does not concern enough, given that it has to do with the application of international law rules for the traffic of the straits (Kotliar, 2000).

New regulations from the side of Turkey were carried out in 1998 to resolve ambiguities as well as to agree on the principles of international law as well as the relevant provision of Vessel Traffic Services (V.T.S.) information on the straits¹².

As we understand the problems are of a technical nature and the resolution of the regulations for free navigation turned out to be quite complex in practice, since it had to be in accordance with the rules of UNCLOS III and the Montreux Convention, as well

11IMO, SN/Circ. 166/1.6.1994, 2ss:
https://www.navcen.uscg.gov/sites/default/files/pdf/marcomms/imo/SN_Circulars/SN%20Circ168.pdf

12The use of a navigator was mandatory for Turkish-flagged ships that were over 150 meters long and for the rest of the ships there is just a general recommendation.

as the general conditions that exist for pollution of the sea by ships, the relevant protocol, i.e. the MARPOL Convention¹³, the Convention “on International Regulations to Avoid Collisions at Sea” or the COLREG Convention¹⁴, the Convention “on the Safety of Human Life at Sea” or the SOLAS Convention¹⁵ and the Convention “on the Control of Transboundary Movements of Hazardous Wastes and the their processing” or Basel Convention. Specifically, Turkish legislation should be harmonized with COLREG. The accumulation of ships at the entrances of the straits was the result of a discounted form of application of the IMO legislation since the straits characterized by particularities that had to do with its usual application.

The MARPOL treaty can be applied in the case where the ship's flag comes from a third country and the ships are in ports. SOLAS deals with the safety of merchant ships. The security of the coastal state and the freedom of navigation in the straits remain on the same line as the Montreux Convention, where it states that:

“(...) the Montreux Convention did not define by what measures the security of Turkey will be ensured, this definition does not can be done than by Turkey itself, and this was done precisely with the adoption of the Regulation of 1994 (...)”.

Security for Turkey regarding the states of the foreign territory

¹³[https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx)

¹⁴<https://www.imo.org/en/About/Conventions/Pages/COLREG.aspx>

¹⁵[https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx)

and as mentioned in the preamble of the Montreux convention are binding on the contracting parties, as an indivisible whole.

The interpretation will also take into account the general provisions that specify the main part of the international convention. Purpose of the convention and the contracting parties partly it has to do with the teleological interpretation which has to do with the passage and article 28, that is, the relative opening for freedom of navigation to be of unlimited duration and beyond the expiration of the agreement¹⁶.

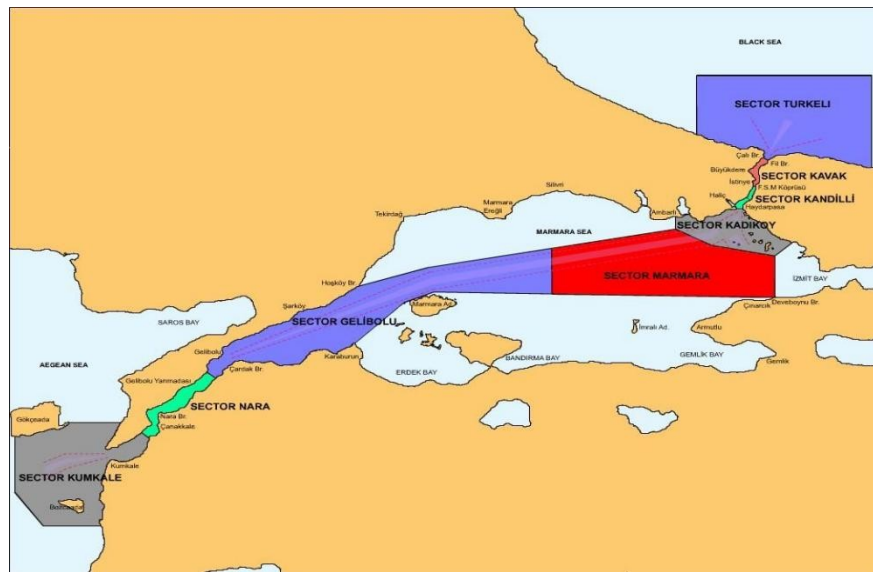
The main purpose of the convention was to secure the free navigation of the strait and littoral states where the security deposit was in the convention. The security agreement has to do with territorial integrity and the related regulations with warships, the caliber of guns with a large number in the black sea, with sanitary problems as well as the projection of free navigation within the straits.

The convention was particularly contemporary for its time, but not for our days, where the sanitary rules are particularly developed and the topic of ecological disasters is running with a leap forward for the maritime form of traffic in the straits based on good faith and the application of the regulation, where the practices do not conflict with its content and with every form of interpretation *contra legem*, which cannot be the object of a

¹⁶Art. 28 of the treaty of Montreux.

different interpretation.

Map 8: The new vessel traffic system (V.T.S.) of Turkey (2/18/2007)



Source:

http://www.deepbluemaritime.com/DeepBlue_Maritime_files/TURKISH STRAITS V.T.S. GUIDE.pdf

Conclusions

The treaty regime that regulated the straits was an essential diplomatic solution and a success on the part of Turkey and Russia. The Montreux Convention may be considered outdated, but the development of technology, the international legal status

for the protection of the sea and the environment were favorable for the development of the ship passage in a safer way while at the same time ensuring the strategic interests in the area. The main purpose has always been free navigation and the international right of freedom of passage as an objective characteristic of the rightful rule.

In parallel, the passage freedom is not unlimited. These are concepts that are not clearly controllable and are often linked both to the accidents that have occurred and to the increase in traffic on the streets. For the states in black sea, every form of agreement, and especially the one of Montreux, had as its purpose territorial integrity and, over time, faithfulness to the provisions of UNCLOS III and the transit movement with the ultimate goal of free navigation in the straits.

At the same time, the same convention also imposed restrictive conditions on the passage of warships through the straits and submarines of third countries. For the ships of overseas states that had been purchased, repaired outside the Black Sea the relative surplus was allowed on the surface. Also, the overflight of their aircraft involved prohibitions, restrictions and commitments.

The transit movement also exists in the new agreement based on the principles of international law. The main feature of the agreement was a relative compromise for the implementation of

a special and specific regime for ships, which also meant the end of the Ottoman Empire. A contractual regime which grants the right to pass and cross the straits as well as the abolition of international supervision. It is about a legal, diplomatic and political status for the free navigation and security of Turkey and the overseas states.

The imminent danger of war and the interruption of traffic in the straits for international navigation among the provisions of the convention had been interpreted in a not so objective way by Turkey itself, even though it had the main control. The interdiction of aircraft carriers and ships with an armament caliber over 203 mm was linked to the interests of Turkey, which the convention was obliged to follow.

With the passage of time, the evolution of protection of the straits and the minimization of restrictions led to the free navigation of the straits, which acquired a customary character with an objective and binding character. Free navigation through the straits also meant the security of Turkey's territorial integrity.

After the signing of UNCLOS III, the international community was no longer close to the status of the coastal state and the recognition of interests in the seas. Marine pollution, the avoidance of marine accidents was the object of further protection where the passage of warships and submarines

through the straits was particularly important.

The continuous and increasing volume of ships among the geographical features of the area, with strong currents, tight bends, was the object of research and study for the continuous accidents that caused damage to the coastal environment. The domestic law and the IMO regulations proceeded to overturn the international contractual relations. These were in full agreement with the regulations and recommendations for dealing with marine accidents and the environmental consequences for the straits, i.e. problems that intervened in time without solution.

The included clause for the radical changes of the conditions and the termination of the Convention as well as for its relevant revision had as a result the difficulty of keeping balances between restrictive conditions. The freedom of navigation should move towards new regulations and in the creation of a new status of customary law mainly regarding the transit movement and what UNCLOS III brought forth, i.e. through the formation of a strong *opinio juris*.

The naming of the straits, the enclosing of the maritime area and the internal waters between unilateral internal acts, that regulate the straits, is also the response of a revisionary policy aimed at serving the interests of Turkey, which has not yet proceeded with a revision of the Convention between internal rules in accordance with the principles of international law and the law

of the sea.

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